1993

The State of Utah v. Grove L. Flower : Brief of Appellee

Utah Court of Appeals

Paul T. Morris; City Attorney; J. Richard Catten; West Valley City Attorney; Attorney for Appelllee.
Robert Breeze; Attorney for Appellant.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH (WVC),	:	
	:	
Plaintiff/Appellee	:	
	:	Appellate No. 930251-CA
vs.	:	
	:	Priority No. 2
GROVE L. FLOWER,	:	
	:	
Defendant/Appellant	:	

BRIEF OF THE APPELLEE

On Appeal from the Third Circuit Court, West Valley Department, in and for Salt Lake County, State of Utah, the Honorable William A. Thorne Presiding

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JURISDICTION

Appellate jurisdiction over this case is rested in the Utah Court of Appeals, pursuant to Section 78-2a-3(2)(f), Utah Code Annotated (herein "U.C.A.").

STATEMENT OF THE ISSUES

Each of the issues being a question of law, the appropriate standard of review is *de novo* review by the Court of Appeals.

1. Did the trial court correctly take judicial notice regarding the location of a numerical address?

2. Is venue an essential element of the offense and may it be established by a preponderance of the evidence?

3. Did Appellant's failure to object prior to trial waive his rights to contest venue?

4. Does Section 76-1-202(2), U.C.A., conflict with Section 76-1-501(3), U.C.A., and due process requirements concerning proof on the issue of venue?

5. Does Section 76-1-202(1), U.C.A., render Section 76-1-501(3), U.C.A., unconstitutional as violative of the requirement that all facts constituting a crime must be proved beyond a reasonable doubt?

DETERMINATIVE CONSTITUTIONAL PROVISIONS,
STATUTES, ORDINANCES AND RULES

Utah Code Annotated, Section 76-1-202(2):

76-1-202. Venue of actions.
(2) All objections of improper place of trial are waived by a defendant unless made before trial.

(Full text of Section 76-1-202 attached as Exhibit A.)

Utah Code Annotated, Section 76-1-501:

76-1-501. Presumption of innocence -- "Element of the offense" defined.
(1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In absence of such proof, the defendant shall be acquitted.
(2) As used in this part the words "element of the offense" mean:
(a) The conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense;
(b) The culpable mental state required.
(3) The existence of jurisdiction and venue are not elements of the offense but shall be established by a preponderance of the evidence.

Utah Rules of Evidence, Rule 201:

Rule 201. Judicial notice of adjudicative facts.
(a) Scope of rule. This rule governs only judicial notice of adjudicative facts.
(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
(c) When discretionary. A court may take judicial notice, whether requested or not.

(Full text of Rule 201 attached as Exhibit B.)

STATEMENT OF THE CASE

West Valley City accepts Appellant Flower's presentation of the nature of the case.

RELEVANT FACTS

1. Flower was charged, by citation (R-1) and by Information (R-16, 17; Exhibit C), with violating Section 41-6-44, U.C.A., "Driving under the influence of alcohol," and Section 41-6-45, U.C.A., "Reckless driving."

2. The Information alleged that both offenses occurred at 3596 West 3100 South in West Valley City, State of Utah. (R-16, 17; Exhibit C)

3. Prior to trial, Flower made no motions or objections regarding the venue of the trial.

4. The matter was heard as a bench trial in the Third Circuit Court, West Valley Department, on January 13, 1993, before the Honorable William A. Thorne. (R-5)

5. Two witnesses were presented by the prosecution -- Colleen Hansen, a private citizen, and Officer Black, a West Valley City Police Department Patrol Officer. The defense presented no witnesses. (R-81; Exhibit D)

6. Neither witness directly testified that the offense of driving under the influence occurred within the limits of West Valley City. (R-81; Exhibit D)

7. Witness Hansen testified that the offense occurred at her place of employment, which was located at 3596 West 3100 South. (R-82; Exhibit D)

8. The trial court, based upon the address evidence presented by Witness Hansen, took judicial notice at the time of the trial that the address of 3596 West 3100 South is located within West Valley City. This finding was based upon the following findings of the trial court:

a. The court found that it was familiar with the location of the address of 3596 West 3100 South and knew it to be within West Valley City limits. (R-82; Exhibit D)

b. The address is unique, and there is not another 3596 West 3100 South within Salt Lake County. (R-82; Exhibit D)

c. The court found that 3596 West 3100 South is not located near the border of West Valley City or any other jurisdiction; but, rather, is located near the center of West Valley City. (R-82; Exhibit D)

d. The court found the address of 3596 West 3100 South to be generally known within the territorial jurisdiction of the court to be within West Valley City. (R-82; Exhibit D)

9. At the conclusion of the presentation of evidence and arguments, the court found Flower guilty of driving under the influence of alcohol and not guilty of reckless driving. (R-74, 75)

SUMMARY OF THE ARGUMENT

POINT 1

THE TRIAL COURT CORRECTLY TOOK JUDICIAL NOTICE THAT 3596 WEST 3100 SOUTH IS WITHIN WEST VALLEY CITY.

The trial court correctly took judicial notice at the time of trial that the address of 3596 West 3100 South is located within West Valley City. Rule 201(b) of the Utah Rules of Evidence governs the taking of judicial notice. A court is presumed to know what is generally known or what a person of ordinary intelligence would know. In the instant case, the location of 3596 West 3100 South is precisely the type of fact the court could take judicial notice of. First, its location is generally known within the territorial jurisdiction of the trial court. Second, the address allows for accurate and ready determination. The rational conclusion for the trial court to draw was that the offense was committed in the location as alleged in the Information. Several other states allow courts to take judicial notice of streets and buildings.

POINT 2

VENUE IS NOT AN ESSENTIAL ELEMENT OF THE OFFENSE AND MAY BE ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE ON A PREPONDERANCE OF THE EVIDENCE STANDARD.

Utah case law and the Criminal Code clearly set forth that venue is not an essential element of the offense and must only be established by a preponderance of the evidence. Section 76-1-501(3), U.C.A., clearly states, "The existence of jurisdiction

and venue are not elements of the offense but shall be established by a preponderance of the evidence." Furthermore, the judicial notice taken clearly meets the preponderance of evidence standard.

POINT 3

APPELLANT HAS WAIVED HIS RIGHT TO CONTEST VENUE, SINCE HE DID NOT OBJECT PRIOR TO TRIAL AS REQUIRED BY SECTION 76-1-202(2), U.C.A.

Appellant Flower has waived his opportunity to contest venue. Section 76-1-202(2), U.C.A., clearly states that any objection must be made before trial. The Utah Supreme Court has held that even in criminal cases a defendant can waive any objection to venue. In this case, Flower did not object before trial; therefore, Flower cannot be heard to raise the objection on appeal.

POINT 4

SECTION 76-1-202(2), U.C.A., DOES NOT CONFLICT WITH SECTION 76-1-501(3), U.C.A., OR WITH DUE PROCESS REQUIREMENTS CONCERNING PROOF ON THE ISSUE OF VENUE.

Section 76-1-202(2), U.C.A., pertains to procedure; it does not pertain to guilt. Venue does not determine guilt; it determines the place where the suit may or should be heard and can be waived by the defendant if no timely objection is made. Section 76-1-501(3), U.C.A., states that venue is not an element of criminal offenses and that it be established by a preponderance of the evidence.

Section 76-1-202(2), U.C.A., and Section 76-1-501(3), U.C.A., clearly do not conflict. Flower's argument is based on the incorrect legal principle that the venue statute deals with guilt.

POINT 5

THE VENUE PROVISIONS IN SECTION 76-1-202(1), U.C.A., DO NOT RENDER SECTION 76-1-501(3), U.C.A., UNCONSTITUTIONAL AS VIOLATIVE OF THE REQUIREMENT THAT ALL OF THE FACTS CONSTITUTING A CRIME MUST BE PROVED BEYOND A REASONABLE DOUBT.

Section 76-1-202(1), U.C.A., sets forth the procedural rules for determining proper venue and does not make venue an element of the crime. However, Appellant Flower is forced to argue that the intent of the legislature was to make venue an essential element of the crime in order to challenge the constitutionality of Sections 76-1-202(1) and 76-1-501(3), U.C.A. Flower's argument is based on unfounded assumptions. Venue is not an element of the offense and can be proved by a preponderance of the evidence. Furthermore, Section 76-1-202(2), U.C.A., in no way shifts the burden of proving guilt from the prosecution to the defendant.

ARGUMENT

POINT 1

THE TRIAL COURT CORRECTLY TOOK JUDICIAL NOTICE THAT 3596 WEST 3100 SOUTH IS WITHIN WEST VALLEY CITY.

The trial court correctly took judicial notice at the time of trial that the address of 3596 West 3100 South is located within West Valley City, Salt Lake County, Utah. The rule governing judicial notice of adjudicated facts is set forth in Rule 201(b) of the Utah Rules of Evidence, which states:

> A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or

> (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

Utah R. Evid. 201. A court is presumed to know what is generally known or what a person of ordinary intelligence would know.

In the instant case, the location of 3596 West 3100 South is precisely the type of fact that is appropriate for the trial court to take judicial notice of. The location is generally known within the territorial jurisdiction of the trial court. And the trial court found that it was personally familiar with the location (R-82; Exhibit D). The court also found the address to be unique within Salt Lake County and to be near the center of West Valley City, rather than near any border. (R-82; Exhibit D)

Flower contends that the trial court erred in taking judicial notice because there was no direct evidence that the address is in Salt Lake County or West Valley City, despite the direct testimony that the offense occurred at 3596 West and 3100. (Appellant's Brief, p. 7.) However, the trial court does not have to presume less than general intelligence, and under the circumstances it would have been naive to say that 3596 West and 3100 South is an indefinite location not within West Valley City or Salt Lake County.

The Illinois Supreme Court, in *People v. Pride*, 156 N.E.2d 551 (Ill. 1959), addressed the issue upon reviewing a case in which testimony was given that a crime was committed at a particular address, but in which no direct evidence was given as to the city or county. The court noted that when people are referring to a

street within the city in which they live, they commonly refer only to the street. Conversely, when they are referring to a street in a different city, they will also name the city. Specifically, the court reasoned:

> Describing a location by street and number is so much a part of our every day life that it cannot be ignored. A witness's testimony should not be considered in a vacuum divorced from our general knowledge as to the manner in which things are said. And, so, common experience dictates that a witness testifying in Chicago, when speaking of 8900 S. Anthony Avenue, is speaking of 8900 S. Anthony Avenue in Chicago, Cook County, Illinois, although there may very well be an 8900 S. Anthony Avenue in some city other than Chicago, in some county other than Cook and in some state other than Illinois.

Pride, 156 N.E.2d at 554, 555.

As a result, although there was no direct evidence to establish in which city, county, or state the crime occurred, the court held the record sufficient to prove venue of the crime. In the present case, Witness Hansen testified in West Valley City that the offense occurred at her place of employment, which was located at 3596 West 3100 South. The rational conclusion for the trial court to draw was that the offense was committed in the location alleged in the Information. Several other states also allow courts to take judicial notice of streets and buildings. *See State v. Nelson*, 543 So. 2d 1058 (La. App. 4 Cir. 1989); *State v. Larsen*, 442 N.W.2d 840 (Minn. App. 1989); *State v. Spain*, 759 S.W.2d 871 (Mo. App. 1988); *People v. Hosney*, 22 Cal. Rptr. 397 (Cal. App. 1962).

Flower relies on the holding of *In re Phillips Estate*, 44 P.2d 699 (Utah 1935), a probate case, for the proposition that judicial notice of an address is improper. However, he completely misstates the facts when he states, "The Supreme Court held that the trial court erred in taking judicial notice of the fact that University Avenue and Center Street are in Provo." (Appellant's Brief, p. 8.) In *In re Phillips Estate*, the Supreme Court was not setting aside judicial notice of a lower court. No trial court had taken judicial notice concerning the location of the streets. The Supreme Court was refusing to take judicial notice at the appellate stage of the proceedings. That is clearly not on point with the present case. The Supreme Court stated, "We cannot take judicial notice that these streets are in Provo or that they are actually within 80 yards of each other." (Emphasis added.) Instead, the Supreme Court remanded the case to the lower court for further proceedings. *In re Phillips Estate*, 444 P.2d at 704, 705. *In re Phillips Estate* certainly does not prohibit a trial court from taking judicial notice of the location of an address.

The trial court correctly took judicial notice at the time of trial that the address of 3596 West 3100 South is located within West Valley City.

POINT 2

VENUE IS NOT AN ESSENTIAL ELEMENT OF THE OFFENSE AND MAY BE ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE ON A PREPONDERANCE OF THE EVIDENCE STANDARD.

In *State v. Bailey*, 282 P.2d 339 (Utah 1955), the Utah Supreme Court ruled on a case very similar to the instant case. In *Bailey*, the witness testified that the offense (which was also "driving under the influence") had been committed at Roller Mill Hill, yet there was no direct proof that the offense was committed within Garfield County. The Supreme Court quoted an earlier case, *State v. Mitchell*, 278 P.2d 618 (Utah 1955), and stated:

> Some jurisdictions require that, in criminal cases, where venue is in issue, it must be proved beyond a reasonable doubt, and others by a preponderance. Some authorities, including this court, permit venue to be established inferentially by circumstantial evidence. We believe and hold that, however it is proved, it must be done by a preponderance of the evidence only and not beyond a reasonable doubt, since venue is not an element of the offense, and there seems to be no reason to require the same quantum and quality of proof to prove venue as is required to prove such elements.

Mitchell, 278 P.2d at 620. From the testimony presented in *Bailey*, the Supreme Court determined that it could reasonably be inferred that the offense was committed in Garfield County. *Bailey*, 282 P.2d at 341.

In addition, the Criminal Code clearly sets forth that venue is not part of the state's case and must only be established by a preponderance of the evidence. Section 76-1-501(3), U.C.A., states, "The existence of jurisdiction and venue are not elements

of the offense but shall be established by a preponderance of the evidence."

The judicial notice taken clearly meets the preponderance of evidence standard. *See State v. Spain*, 759 S.W.2d 871 (Mo. App. 1988); *People v. Hosney*, 22 Cal. Rptr. 397 (Cal. App. 1962). In fact, in other jurisdictions which require that venue be proved beyond a reasonable doubt, courts have held that this higher standard was met by taking judicial notice of addresses and geographical locations. *See State v. Larsen*, 442 N.W.2d 840 (Minn. App. 1989); and *State v. Williams*, 474 So. 2d 23 (La. App. 2 Cir. 1985).

POINT 3

APPELLANT HAS WAIVED HIS RIGHT TO CONTEST VENUE, SINCE HE DID NOT OBJECT PRIOR TO TRIAL AS REQUIRED BY SECTION 76-1-202(2), U.C.A.

Section 76-1-202(2), U.C.A., states, "All objections to improper place of trial are waived by a defendant unless made before trial." Flower did not object to venue before trial. Therefore, Flower has waived his objection and cannot raise it on appeal.

In considering the venue issue, the United States Supreme Court ruled that "the right to have a case heard in the court of the proper venue may be lost unless seasonably asserted." *Industrial Addition Ass'n v. Commissioner of Internal Revenue*, 323 U.S. 310, 65 S. Ct. 289, 89 L. Ed. 260. Furthermore, the Utah Supreme Court has specifically held that Section 76-1-202(2),

U.C.A., applies to criminal defendants and that their failure to raise venue prior to trial waives their later objections.

In *State v. Lovell*, 758 P.2d 909 (Utah 1988), the court stated:

> Utah law requires that a defendant be tried in the county where the crime(s) occurred.[2] However, all objections of improper place of trial are waived by a defendant unless made before trial.[3] In this case, defendant made no objection to venue, and therefore he waived any objection thereto.

Lovell, 758 P.2d at 911. (Footnotes omitted.) *See also State v. Dunbar*, 665 P.2d 1273 (Utah 1983); *State v. Cauble*, 563 P.2d 775 (Utah 1977) (the right to be tried in the county where the crime occurred "is a *personal privilege* which can be waived by failing to make a proper objection").

POINT 4

SECTION 76-1-202(2), U.C.A., DOES NOT CONFLICT WITH SECTION 76-1-501(3), U.C.A., OR WITH DUE PROCESS REQUIREMENTS CONCERNING PROOF ON THE ISSUE OF VENUE.

Section 76-1-202(2), U.C.A., and Section 76-1-501(3), U.C.A., are not in conflict. According to Section 76-1-202(2), U.C.A., a defendant waives any right to object that the place of trial is improper if venue is not contested before trial. Section 76-1-501(3), U.C.A., requires that venue be established by a preponderance of the evidence. A defendant who questions if venue is proper can object. The prosecution must prove venue by a preponderance of the evidence. These two sections work in harmony with each other and set forth clear rules for the procedural

handling of venue issues. They clearly do not conflict, either on their face or in practice.

Flower's assertion, that Section 76-1-202(2), U.C.A., functions as a virtual mandatory rebuttable presumption of guilt on the question of where an alleged offense occurred, is based upon the rationale that the location of trial relates to guilt. (Appellant's Brief, p. 5.) However, this assertion and rationale are erroneous. Venue does not determine guilt. Venue simply determines the place where the trial may or should be held. Venue does not determine whether the law has been violated. If the defendant contests venue and loses, his or her guilt is still not established. Similarly, if the defendant contests venue and wins, it does not establish his or her innocence. Section 76-1-202(2), U.C.A., pertains to procedure. It does not pertain to guilt.

Furthermore, contrary to Flower's assertion, Section 76-1-202(2), U.C.A., does not conflict with *State v. Bailey*, 282 P.2d 339 (Utah 1955). (Appellant's Brief, p. 5.) In *Bailey*, the jury was given instruction that in order to find the defendant guilty of driving under the influence, it must find that the defendant's driving occurred in Garfield County as charged. From the testimony presented, the Supreme Court determined it could reasonably be inferred that the offense was committed in Garfield County. *Bailey*, 282 P.2d at 341. Section 76-1-202(2), U.C.A., does not relieve the prosecution from the burden of establishing where the offense occurred. But, as was found in *Bailey*, a preponderance of the evidence is the appropriate standard.

Section 76-1-202(2), U.C.A., and Section 76-1-501(3), U.C.A., clearly do not conflict. Flower's argument is based on the incorrect legal principle that the venue statute deals with guilt.

POINT 5

THE VENUE PROVISIONS IN SECTION 76-1-202(1), U.C.A., DO NOT RENDER SECTION 76-1-501(3), U.C.A., UNCONSTITUTIONAL AS VIOLATIVE OF THE REQUIREMENT THAT ALL OF THE FACTS CONSTITUTING A CRIME MUST BE PROVED BEYOND A REASONABLE DOUBT.

The mandatory language of Section 76-1-202(1), U.C.A., provides that "criminal actions shall be tried in the county or district where the offense is alleged to have been committed." (Emphasis added.) In the present case, the information alleges that the offense was committed in West Valley City; thus the case was tried in the proper location. (R-16, 17; Exhibit C)

Section 76-1-202(1), U.C.A., is a procedural section that deals with venue. It does not establish elements of crimes and there is no language in the section that even mentions element of crimes. Flower's assertion that the intent of the legislature was to make venue or proof of location of the crime an actual element of the case is simply unsupported. (Appellant's Brief, p. 6.) He is forced to make this unsupported assertion in order to find a way to argue that venue is an essential element of a criminal offense so that he can challenge the constitutionality of Sections 76-1-202(1) and 76-1-501(3), U.C.A. Flower cites *In re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970), to show that every fact necessary to constitute a crime must be proved beyond a

reasonable doubt. That proposition is certainly true; yet *In re Winship* is not applicable to venue, and thereon lies the fault with Flower's argument. Despite his assertion, it is without question that venue is not a fact necessary to prove the crime, as described in *In re Winship*, and that venue may be established by circumstantial evidence on a preponderance of the evidence standard. *State v. Bailey*, 282 P.2d 339 (Utah 1955); *State v. Mitchell*, 278 P.2d 618 (Utah 1955); Utah Code Ann. § 76-1-501(3).

Since venue is not an element of the offense, the due process protections, as articulated in *In re Winship*, are not violated. Indeed, the Constitution does not require that venue be proved beyond a reasonable doubt. See *United States v. Turner*, 586 F.2d 395 (5th Cir. 1978), cert. denied, 440 U.S. 926, 99 S. Ct. 1258, 59 L. Ed. 2d 480 (1979). Therefore, Section 76-1-501(3), U.C.A., clearly does not relieve the government from any constitutional burden.

Much of Flower's argument is based upon what he thinks the Court of Appeals meant but failed to say in *State v. Sorenson*, 758 P.2d 466 (Ut. App. 1988). Flower boldly states, "The only thing that kept the Court of Appeals from saying, in *Sorenson*, that the government must prove venue beyond a reasonable doubt is the 'preponderance of the evidence' language in U.C.A. 76-1-501(3)." (Appellant's Brief, p. 6.) Contrary to Flower's assertion, the Court of Appeals did not even address venue. In *Sorenson*, the language of Section 76-1-501(3), U.C.A., was not in question. In fact, the Court of Appeals found that jurisdiction need not be

proved beyond a reasonable doubt, but, rather, by a preponderance of the evidence. *Sorenson*, 758 P.2d at 470. The Court of Appeals' concern in *Sorenson* was that the state "put on absolutely no evidence of jurisdiction but relied instead entirely on the presumption that the consumption of alcohol occurred within the state." *Sorenson*, 758 P.2d at 470. The problem with such a presumption is that in the specific facts of that case, jurisdiction was bound up in a substantive element of the crime -- namely, possession or consumption of alcohol within the state of Utah in violation of state law. In that way, it became a presumption of guilt, thus creating a due process violation.

However, the instant case is significantly distinguishable from *Sorenson* because venue, not jurisdiction, is in issue. In the instant case, there is no question that the Court of Appeals had jurisdiction.[1] Also, no presumption concerning guilt is made in the case at hand. When objections to venue are waived, there still must be a trial to establish guilt. Section 76-1-501, U.C.A., does not make venue an essential element of the crime, since the place of trial does not affect the question of the defendant's guilt. Consequently, Section 76-1-202(2), U.C.A., in no way shifts the burden of proving guilt from the prosecution to the defendant.

It is clear that Section 76-1-202(1), U.C.A., does not render Section 76-1-501(3), U.C.A., violative of the standard articulated in *In re Winship* that every fact necessary to constitute the crime

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[1] In the case at hand, the charge was a violation of Section 41-6-44, U.C.A., "Driving under the influence of alcohol," and Section 41-6-45, U.C.A., "Reckless driving." Both charges are misdemeanors which are unquestionably within the jurisdiction of the circuit courts of this state to try.

need be proved beyond a reasonable doubt. Flower's argument is based on unsupported assumptions and should be disregarded. Venue is not an element of an offense and can be proved by a preponderance of the evidence.

CONCLUSION

For the reasons advanced above, judicial notice was properly taken by the trial court establishing venue by a preponderance of the evidence, and the trial court's denial of Defendant's Motion for Order Arresting Judgment should be affirmed in all respects.

DATED this 16th day of July, 1993.

WEST VALLEY CITY

J. Richard Catten
Attorney for Appellee

CERTIFICATE OF MAILING

I, the undersigned, certify that on the 16th day of July, 1993, I mailed (postage prepaid) four true and correct copies of the foregoing Brief of the Appellee to the following party:

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Attorney for Appellant
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Karen P. Hinckley

JRC:KH:FLOWER.BRF
071693:F:APP93-4

ADDENDUM

Exhibit A

PART 2
JURISDICTION AND VENUE

76-1-202. Venue of actions.

(1) Criminal actions shall be tried in the county or district where the offense is alleged to have been committed. In determining the proper place of trial, the following provisions shall apply:

(a) If the commission of an offense commenced outside the state is consummated within this state, the offender shall be tried in the county where the offense is consummated.

(b) When conduct constituting elements of an offense or results that constitute elements, whether the conduct or result constituting elements is, in itself, unlawful, shall occur in two or more counties, trial of the offense may be held in any of the counties concerned.

(c) If a person committing an offense upon the person of another is located in one county and his victim is located in another county at the time of the commission of the offense, trial may be held in either county.

(d) If a cause of death is inflicted in one county and death ensues in another county, the offender may be tried in either county.

(e) A person who commits an inchoate offense may be tried in any county in which any act that is an element of the offense, including the agreement in conspiracy, is committed.

(f) Where a person in one county solicits, aids, abets, agrees, or attempts to aid another in the planning or commission of an offense in another county, he may be tried for the offense in either county.

(g) When an offense is committed within this state and it cannot be readily determined in which county or district the offense occurred, the following provisions shall be applicable:

(i) When an offense is committed upon any railroad car, vehicle, watercraft, or aircraft passing within this state, the offender may be tried in any county through which such railroad car, vehicle, watercraft, or aircraft has passed.

(ii) When an offense is committed on any body of water bordering on or within this state, the offender may be tried in any county adjacent to such body of water. The words "body of water" shall include but not be limited to any stream, river, lake, or reservoir, whether natural or man-made.

(iii) A person who commits theft may be tried in any county in which he exerts control over the property affected.

(iv) If an offense is committed on or near the boundary of two or more counties, trial of the offense may be held in any of such counties.

(v) For any other offense, trial may be held in the county in which the defendant resides, or, if he has no fixed residence, in the county in which he is apprehended or to which he is extradited.

(2) All objections of improper place of trial are waived by a defendant unless made before trial.

Exhibit B

ARTICLE II.
JUDICIAL NOTICE.

Rule 201. Judicial notice of adjudicative facts.

(a) **Scope of rule.** This rule governs only judicial notice of adjudicative facts.

(b) **Kinds of facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) **When discretionary.** A court may take judicial notice, whether requested or not.

(d) **When mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) **Opportunity to be heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) **Time of taking notice.** Judicial notice may be taken at any stage of the proceeding.

(g) **Instructing jury.** In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Exhibit C

2A
10-22
UAT

Keith L. Stoney (3868)
City Prosecutor
West Valley City
3600 Constitution Boulevard
West Valley City, UT 84119
(801) 963-3331

IN THE THIRD CIRCUIT COURT, STATE OF UTAH
SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

STATE OF UTAH (WVC) Plaintiff, v. FLOWER, GROVER LAWRENCE 4256 SOUTH WHIPORWHOOL ST WVC, UTAH 84120 6/30/61 Defendant.	I N F O R M A T I O N Case No. 925013801TC

The undersigned, KEITH L. STONEY, under oath, states on information and belief that the defendant, on or about 15 NOVEMBER, 1992, at the vicinity of 3596 WEST 3100 SOUTH, West Valley City, Utah, did unlawfully commit the crime(s) of:

COUNT 1: DUI, a Class "B" Misdemeanor, 41-6-44, U.C.A. 1953, as amended, by driving or being in actual physical control of a vehicle while having a blood or breath alcohol content of .08% or greater by weight or while under the influence of alcohol or drugs.

COUNT 2: RECKLESS DRIVING, a Class B Misdemeanor, 41-6-45, U.C.A. 1953, as amended, by operating any vehicle in willful or wanton disregard for the safety of persons or property.

This information is based on evidence obtained from the following witnesses:

OFFICER BLACK
OFFICER SANDQUIST
CHAD M. PETERSEON
COLLEEN HANSEN
KEITH D. LAYTON
TROOPER MCGREGOR

PROBABLE CAUSE STATEMENT:

Your affiant bases this information on the following:

WITNESSES STATE THAT THE DEFENDANT drove or was in actual physical control of a vehicle while having a blood or breath alcohol content of .08% or greater by weight, or while under the influence of alcohol or any drug or the combined influence of alcohol and any drug to a degree which rendered the defendant incapable of safely driving said vehicle; DEFENDANT OPERATED HIS MOTOR VEHICLE WITH WILLFUL OR WANTON DISREGARD FOR THE PROPERTY OR SAFETY OF OTHERS..

Complainant

92020636, MG, FLOWER.G
PTC: 8 JANUARY, 1992, 9:00 A.M.
January 8, 1993

Exhibit D

MAR 1 6 1993

J. Richard Catten (#4291)
Senior Attorney
WEST VALLEY CITY
3600 Constitution Boulevard
West Valley City, Utah 84119
(801)963-3271

IN THE THIRD CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, WEST VALLEY DEPARTMENT

STATE OF UTAH (WVC), Plaintiff, v. GROVE L. FLOWER, Defendant.	FINDINGS, CONCLUSIONS, AND ORDER ON DEFENDANT'S MOTION FOR ORDER ARRESTING JUDGMENT Case No. 925013701 TC Judge William A. Thorne

Defendant Grove L. Flower having presented a Motion for Order Arresting Judgment pursuant to Rule 23 of the Utah Rules of Criminal Procedure, the Court received written memoranda in support and in opposition to the Motion. The parties also appeared before the Court in oral argument on the Motion on February 18, 1993, with Robert B. Breeze appearing for the Defendant and J. Richard Catten appearing for the prosecuting agency, West Valley City. The Court, upon review of the pleadings, memoranda, affidavits, authorities, and arguments of the parties, and being fully advised in the premises, hereby makes and enters the following findings of fact, conclusions of law, and order with respect to Defendant's Motion for Order Arresting Judgment.

FINDINGS OF FACT

1. Defendant was charged, by Information, with violation of Section 41-6-44, Utah Code Annotated (UCA), "Driving under the influence of alcohol," and Section 41-6-45, UCA, "Reckless driving."

2. The matter was heard as a bench trial in the Third Circuit Court, West Valley Department, on January 13, 1993, before the Honorable William A. Thorne.

3. Two witnesses were presented by the prosecution -- Colleen Hansen, a private citizen, and Officer Black, a West Valley City Police Department Patrol Officer. The defense presented no witnesses.

4. At the conclusion of the presentation of evidence and arguments, the Court found the Defendant guilty of driving under the influence of alcohol and not guilty of reckless driving.

5. On or about January 21, 1993, Defendant filed a Motion for Order Arresting Judgment and accompanying affidavits, pursuant to Rule 23 of the Utah Rules of Criminal Procedure.

6. On or about February 9, 1993, Plaintiff filed a Response to Motion for Order Arresting Judgment.

7. At oral argument on February 18, 1993, the parties stipulated on the record, and the Court finds the following:

a. Neither witness directly testified that the offense of driving under the influence occurred within the limits of West Valley City.

b. Witness Hansen testified that the offense occurred at her place of employment, which was located at 3596 West 3100 South.

8. The Court is familiar with the location of the address of 3596 West 3100 South and knows it to be within West Valley City limits. The address is unique, and there is not another 3596 West 3100 South within Salt Lake County. The Court further finds that 3596 West 3100 South is not located near the border of West Valley City or any other jurisdiction; but, rather, is located near the center of West Valley City.

9. The address of 3596 West 3100 South is generally known within the territorial jurisdiction of the Court to be within West Valley City.

10. The Court, based upon the address evidence presented by Witness Hansen, took judicial notice at the time of the trial that the address of 3596 West 3100 South is located within West Valley City. The Court gave little weight to the evidence that the arresting officer was a West Valley City officer.

11. The Court, at the time of the trial, did not ~~make note or~~ place on the record that the Court had taken judicial notice that the address was within West Valley City.

CONCLUSIONS OF LAW

1. Rule 201 of the Utah Rules of Evidence provides that a court may take judicial notice of adjudicative facts which are not subject to reasonable dispute and which are generally known within the territorial jurisdiction of the trial court.

2. It is not subject to reasonable dispute that the address of 3596 West 3100 South is generally known within the territorial jurisdiction of the Court as being within West Valley City limits.

ORDER

Based upon the foregoing, Defendant's Motion for Order Arresting Judgment is denied.

DATED this 17 day of March, 1993.

William A. Thorne
Third Circuit Court Judge

APPROVED AS TO FORM:

3-15-93

Robert B. Breeze, Esq.

JRC:KH:FLOWER.ORD
030993:F:FLO92

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CERTIFICATE OF MAILING

I, the undersigned, certify that on the 9th day of March, 1993, I mailed (postage prepaid) a true and correct copy of the foregoing Findings, Conclusions, and Order on Defendant's Motion for Order Arresting Judgment to the following party:

Robert B. Breeze, Esq.
Attorney for Defendant
211 East 300 South, #215
Salt Lake City, Utah 84111

Karen P. Hinckley